

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1392 CUTTACK, WEDNESDAY, MAY 28, 2025/JAISTHA 7, 1947

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 21st May 2025

S.R.O. No. 301/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 28th March 2025 passed in the I.D. Case No. 03 of 2024 [under Section 2-A (2)] passed by the Presiding Officer Labour Court, Bhubaneswar on the industrial dispute between the Chief Operating Officer-*cum*-Director of Medical Service (DMS), Apollo Hospital Enterprises Ltd. Bhubaneswar, Old Sainika School Road, Unit-15, Bhubaneswar-751005 and Mr. Soheb Mohammad, Plot-32, Ashoka Nagar, Bhubaneswar, Khordha, Odisha- 751009 is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 03 of 2024

Dated the 28th March 2025

Present :

Smt. Meenakshee Priyadarsinee,
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

Chief Operating Officer-*cum*-Director of Medical Service (DMS),
Apollo Hospital Enterprises Ltd. Bhubaneswar,
Old Sainika School Road,
Unit-15, Bhubaneswar- 751005. . . First Party—Management

And
Mr. Soheb Mohammad,
Plot-32, Ashoka Nagar,
Bhubaneswar, Khordha,
Odisha- 751009. . . Second Party—Workman

Appearances :

S. S. Rout,	.. For the First Party—Management
Authorised Representative.	
Shri N. K. Mohanty	.. For the Second Party
Authorised Representative.	

AWARD

This is an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short the Act') wherein the second party while challenging the legality and justifiability of the action of the management in terminating him from service with effect from the 25th August 2022, has claimed for his reinstatement in service with full back wages.

2. The case of the disputant involved in the present proceeding, in short, is that :- On being appointed, the second party joined under the management on the 15th February 2018 as a Technician at its Phlebotomy Department, who was drawing the salary of Rs.14,000 per month and worked as such there till, the 25th August 2022 when his service was terminated by the management without any rhyme or reason. Aggrieved against his termination from service the second party raised an industrial dispute before DLO, Khurda for his intervention on the primary ground that his termination has been effected without giving any notice to him or compensation arising out of his termination paid to him. The DLO, Khurda, thereafter issued notices to the management for the purpose of filling of its views to the complaint petition of the second party so also for attending the joint enquiry. But, the management neither filed its view nor attended the joint enquiry. It is averred in the statement of claim that the DLO, Khurda at Bhubaneswar though attempted for conciliation of the dispute, but the same could not be resolved within the stipulated period, for which the second party has filed the present Application before this forum resorting to the provision of Section 2-A (2) of the Act.

3. On service of notice from this Court, the management contested the claim of the second party by filing its written statement. In its statement, the management while admitting about the engagement of the second party as 'Phlebotomist' in its Phlebotomy Department having employment No. 1096409 for the period from the 15th February 2018 to the 25th August 2022 stated with vehemence at the same time that the second party was terminated from service after, the 25th August 2022 as per the complaint received from one Ms. Kalyani Behera who is not an employee of it. Add to it, the second party was thereafter asked to visit the office of the DGM, HR of the management for the purpose of receiving show cause letter, dated the 24th August 2022, but he denied to receive the same. According to the management, despite repeated calls and notices when the second party neither appeared before the DGM HR nor submitted his reply, if any to the show cause letter within the stipulated time of 24 hours and when specifically the allegation (i.e, sending of obscene pictures by him to Ms. Kalyani during office hour and engaging himself in diverting patients of the management to Genex Laboratory) brought against him were clearly proved from the video and photographs as provided on examination, it, in order to keep its reputation, had to terminate him from service. Further, while denying the other averments in the claim statement, the management has prayed for the dismissal of the case.

4. In the rejoinder of the second party filed to the WS of the management, it has been stated that no enquiry was conducted by the management before terminating him from service when it brought some allegations against him. No FIR stated to have been lodged against him on the above allegations by Ms. Kalyani Behera, who is totally an outsider and not an employee of the

management. Rather, his wife had lodged a FIR in the Saheed Nagar P.S. against Ms. Kalyani Behera for her harassment to him wherein she (Ms. Kalyani Behera) during the time of investigation admitted to have raised a complaint before the management due to personal ego and deliberate intention for harassment. Further, Ms. Kalyani Behera has given a statement before the police not to repeat such type of mistake against the second party.

5. The rival contentions of the parties give rise to the following issues for adjudication.

ISSUES

(i) Whether the action of the first party management in terminating the services of the second party with effect from, dated the 25th August 2022 is legal and/or justified ?

(ii) If not, to what other relief (s) the second party is entitled to ?

6. During hearing of the case, the second party has examined himself as WW No. 1 with regard to his affidavit evidence and exhibited as many as 12 numbers of documents under Exts. 1 to 12 on his behalf.

The management, on the other hand while examined its DGM, HR as MW No. 1 on its behalf has also placed reliance on two numbers of documents which are marked as Ext. A & B.

FINDINGS

7. *Issue Nos. (i & ii)*—For the sake of convenience both issues Nos. (i) and (ii) are taken up together for common discussion.

Before going to the issue to be decided, it would be convenient to place the admitted facts of the parties set out in their respective pleadings, in brief at the first instance. The parties are not duel to the fact that the second party joined as Phlebotomist under the management on the 15th February 2018 and got terminated from service on the 25th August 2022. It is not the case of the management that the second party is not a workman and it's establishment is not an industry as per the provisions of I.D. Act. However, it is the specific case of the management that the termination of the second party was pressed into service on the basis of the allegation of sending of obscene pictures by him to one Ms. Kalyani during office hour and engaging himself in diverting patients of the management to Genex Laboratory. The admitted facts remain that said Kalyani Behera is not an employee of the management and that the second party was terminated from service just after one day of receipt of Ext. A from Kalyani Behera by the management. On this aspect, the MW No. 1 during his cross-examination lucidly admitted that a complaint against the second party was received on the 24th August 2022 and the second party was terminated on the 25th August 2022. As it appears, the second party has challenged his terminated from service on the principal reason that neither any enquiry has been conducted against him nor any opportunity has been given to him to prove his innocence while putting his service to an end. It is also the grievance of the second party that the management without following the provisions of the Act has terminated him from service. According to the second party, there is no substance in the allegations made against him by Ms. Kalyani Behera, rather basing on her personal enmity she brought such false allegations against him and that the matter in the meantime i.e., subsequent to his termination, has already been settled between him and Ms. Kalyani Behera. To strengthen such assertions the second party focused on Ext. 12, (the photocopy of a joint compromise petition submitted before the IIC, Saheed Nagar P.S. by the second party, his wife and Ms. Kalyani Behera) and the same has been duly received by the Saheed Nagar PS as evident from the endorsement made therein. The above assertions (i.e., fact of personal enmity, settlement etc.) of the second party find due corroborations

from the contents of Ext. 12. But, it is surprised that the management has raised no objection to Ext. 12 at the time of its admission into evidence.

Per contra, it is the assertion of the management that the allegations brought against the second party vide Ext. A being serious in nature it has no other alternative than to terminate him from service. In this connection, the management invites the notice of the Court to Ext. A that is the photocopy of complaint petition submitted by Ms. Kalyani Behera before the management against the second party and the same has been marked with objection. The allegation, in short, in Ext. A was that the second party not only misbehaved Kalyani Behera but also abused her in filthy language. It is no use spinning a yarn that said Kalyani Behera is not figured as a witness on behalf of the management in this case to prove the allegations made out by her against the second party in Ext. A. So, in that view of matter so also in view of Ext. 12 no importance can be laid on Ext. A. The same is accordingly of no help to the management in this case. It is also the case of the management that basing upon Ext. A the second party was called upon for explanation vide show cause notice dated the 24th August 2022 marked vide Ext. B, but he denied to receive the same. But, it has come out from the evidence of MW No. 1 that there is nothing on the show cause notice regarding the fact of acknowledgement from the side of the second party that he refused to visit the HR Office and to submit any show cause. For the sake of argument if it is admitted for a while that the second party refused to receive Ext. B on being asked, then also it is not understood as to why the management did not opt other modes of communication i.e., E-mail, Regd. Post and other electronic devices in today's time for sending the same. So, it can safely be stated that Ext. B is a created one for the purpose of this case. Further, it is the claim of the management that the video and photographs as provided clearly proved the guilt of the second party. But, nowhere in Ext. A, it has been mentioned that any video and photographs have been supplied by the complainant to the management. Curiously enough the management did not choose to examine the victim/ complainant and produce any videography as well to substantiate the allegations as alleged.

Be that as it may, the imputations levelled against the second party, as stated by the management and Ext. A, being grave in nature, it ought to have held a disciplinary proceeding against the second party by following principle of natural justice. In the context, it is worthy to place reliance on the recent judgment of the Hon'ble Bombay High Court in the case of Shri Vishwanath Bhivaji Kudale V. The Chairman, Maharashtra State Electricity Board and Others wherein it has been held as follows :

“An employer cannot be granted unbridled power of punishing an employee without holding any enquiry especially in respect of the major penalties of dismissal or removal from service.

A full fledged enquiry into the misconduct is warranted in a case where the misconduct is not admitted by an employee and the burden is on the employer to prove the allegations”.

Further the Hon'ble High Court of Punjab & Haryana in the case of Modella Woollens Ltd. Vrs. PO, Labour Court reported in LLR-1993-876 have been held that “No termination is permissible on the ground of misconduct unless proper inquiry is held according to principles of natural justice”.

Now the fact of present case would be examined in the light of principle of law laid down by Hon'ble Bombay High Court in the above case. As observed above, the second party with vehemence challenged the allegations brought against him as the same have not been proved by the management in any manner and he has never admitted the same at any point of time. Admittedly, the management has not come up with any document from which an inference can be drawn that the second party was terminated from his service followed by domestic enquiry. Rather, the MW No. 1 (who is none other than the DGM, HR Deptt. of the management) during his cross-examination categorically stated that no enquiry was conducted against the second party before his termination.

Besides that, a perusal of the provisions of Section 25-F of the Act would reveal that these provisions are mandatory in nature and Clause (b) Section 25-F postulates that no workman shall be retrenched until he has been paid compensation at the time of retrenchment. This section contains mandate that the employer shall not retrench a workman unless retrenchment compensation has been paid prior or the time of the retrenchment. In the present case the condition postulated in Section 25-F (b) has not been complied with. Reliance is placed on the reported decision of the Hon'ble High Court of Punjab Haryana High Court in the case of Mani Ram Vs. the Presiding Officer, Labour Court.

So, in view of the above, the action of the management in inflicting punishment of termination against the second party cannot be said to be either legal or justified.

In view of the finding arrived at, the next question which falls for determination is as to what relief the second party is entitled. In the context, it may be stated here that once it is held that the action of the management is illegal and unjustified, the normal relief is reinstatement with back wages. But, it cannot be oversighted that the MW No.1 during his cross-examination at Para. 20 on being asked stated that presently, another person is working in place of the second party as phlebotomist and such piece of evidence remains unchallenged. That apart, the Hon'ble Apex Court in the case of Jagbir Singh Vrs. Haryana State Agriculture Marketing Board and another, in Civil Appeal No. 4334 of 2009 (Arising out of SLP No. 987/2009), reported in 2009 (4) LLJ 336 (SC) have been pleased to held that "if the termination of an employee is found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. But compensation instead of reinstatement has been held to meet the ends of justice in appropriate cases". So, in view of the above, the relief of reinstatement and back wages, in my considered view, would not be appropriate to be awarded in favour of the second party and instead some compensation would be the just and proper relief in the present proceeding. So considering the age, length of litigation and the status of employment of the second party, it is felt, an Award of lump sum amount towards compensation in lieu of his reinstatement and back wages may be appropriate and best serve the purpose. Accordingly, the management is directed to pay the second party a lump sum compensation of Rs. 4,00,000 (Rupees four lakhs only) in lieu of his reinstatement and back wages within a month of publication of the Award or else the amount of compensation would carry a simple interest of 6% per annum till its realisation.

Dictated and corrected by me.

MEENAKSHEE PRIYADARSINEE

28-03-2025

Presiding Officer

Labour Court, Bhubaneswar.

MEENAKSHEE PRIYADARSINEE

28-03-2025

Presiding Officer

Labour Court, Bhubaneswar.

[No. 4945—LESI-IR-ID-0029/2025-LESI]

By order of the Governor

MADHUMITA NAYAK

Special Secretary to Government